

REMARKS

Applicant has carefully reviewed the Official Action dated June 14, 2005 for the above identified patent application.

The Specification has been amended, at the first paragraph of page 2, to update the status of related Serial No. 10/405,188 to indicate that this application has issued as U.S. Patent No. 6,732,772 on May 11, 2004.

At paragraphs 1 - 6 of the Official Action, non-statutory double patenting rejections based on the judicially created doctrine of non-statutory double patenting have been applied against several of the pending claims based upon Applicant's five (5) previously issued patents (which are identified at page 2, first paragraph of the Specification) which are related to the present application. In response to the rejections based upon the judicially created doctrine of non-statutory double patenting, Applicant has filed the appropriate Terminal Disclaimers (together with the applicable filing fees) with regard to each of the five (5) related patents identified in the Official Action.

Additionally, Terminal Disclaimers have been filed with regard to related U.S. Patent Nos. 6,050,309 and 6,263,928, both of which are identified in the Information Disclosure Statement filed on March 29, 2004. Although the present application does

not claim the benefit of the latter two (2) identified patents, and although the latter two identified patents are not statutory prior art to the present application, Applicant has nonetheless elected to file Terminal Disclaimers with regard to these two additional commonly owned patents.

Applicant respectfully submits that the enclosed Terminal Disclaimers overcome all rejections to the claims raised in the Official Action based upon the judicially created doctrine of obviousness type double patenting.

At page 5, paragraph 9 of the Official Action, Claims 1 - 12, 15 and 41 - 50 have been rejected under 35 U.S.C Section 102(e) as being anticipated by Sandor; at page 5, paragraph 10 of the Official Action, Claims 1 - 12, 15 and 41 - 50 have been rejected under 35 U.S.C. Section 102(b) as being anticipated by Leather; at page 5, paragraph 11 of the Official Action, Claim 12 has been rejected under 35 U.S.C. Section 102(b) as being anticipated by Rai et al; and at page 5, paragraph 12 of the Official Action, Claim 12 has been rejected under 35 U.S.C. Section 102(b) as being anticipated by Reed et al. For the reasons discussed below, Applicant respectfully submits that the claims currently pending in the present application are allowable over the prior art applied in the Official Action.

Claims 1 - 12, 15 and 41 - 50 are pending. Claims 1, 12, 15, 41, and 48 are independent claims. For the purpose of

simplifying the issues, the prior art rejections raised in the Official Action will be argued only with respect to the independent claims. If the independent claims are allowed, the remaining dependent claims will be allowable, at least for the same reasons as the respective parent independent claims.

Turning first to independent Claims 1, 15, 41, and 48, these claims have been amended to expressly recite additional features of the invention disclosed in the original Specification. More specifically, the claims now recite that the claimed apparatus, systems and methods are directed to a closed application system for providing a closed flow path between the product container and product receptacle through the valve. The claims have also been amended to recite means for resiliently biasing the valve assembly in a closed position. These amendments to the claims are supported by the original Specification at, for example, page 2, first paragraph of the original Specification; page 3, last paragraph of the original Specification; page 5, first paragraph of the original Specification; page 6, last paragraph of the original Specification; page 12, first paragraph of the original Specification; and page 20, lines first 2 - 6 of the original Specification.

As noted, independent Claims 1, 15, 41 and 48 have been rejected as being anticipated by both the Sandor patent and the Leather patent. With regard to the Sandor patent, this patent discloses a device for dispensing a constant flow of liquid from

a bottle independent of the level of liquid in the bottle. More particularly, Sandor discloses a dispensing device which permits the contents within the container to be diluted to a desired quantity by mixing the liquid with diluent, particularly water. The objective of the Sandor patent is accomplished by providing air vent passageways which are selectively aligned and misaligned together with separate openings which permit or prevent liquid flow from the container. Therefore, the air vent passageways provided in the Sandor apparatus are necessary to accomplishing the express objectives of the Sandor patent. However, the air vent passageways of Sandor teach against the closed application system, and the closed flow path of product from the container through the valve, or from the container through the valve and into the product receptacle, as now expressly recited in Applicant's claims.

Additionally, the system defined by Applicant's independent Claim 15 expressly recites that the valve assembly is mounted to the product container such that a first component of the valve assembly is conjointly rotatable with the container relative to a second component of the valve assembly. On the contrary, the Sandor patent expressly discloses that in order to open and close a flow valve disposed between a liquid product container and a receptacle, only a single valve component (an outer cap) is moved. An inner cap secured to the product container, and the product container itself, remain stationary during movement of the other valve component (See Column 2, lines 2 - 5 and Column

2, lines 10 - 15) of the Sandor specification. Therefore, the Sandor patent does not teach or suggest a system in which the product container is conjointly movable with a valve component to open or close a valve.

Turning now to the Leather patent, this patent does not teach or suggest means for resiliently biasing a valve in a closed position, as now expressly recited in Applicant's independent Claims 1, 15, 41 and 48. On the contrary, the valve of the Leather patent is moved into its opened position by relative rotation of elements 1 and 2 to align openings in those respective components to permit flow of product. It is necessary to provide relative rotation of elements 1 and 2 in the opposite direction in order to close the valve. There is clearly no teaching or suggestion in the Leather patent to resiliently bias a valve to its closed position in the absence of an opposing force maintaining the valve in its opened position.

Additionally, independent Claims 1, 15 and 41 each recite that the valve assembly is removably mounted to the container. On the contrary, in the device disclosed by the Leather patent, the valve assembly is integrally formed with the container designated by reference numeral 1. Therefore, the Leather patent clearly teaches away from a valve assembly which is removably mountable to a container.

It is well established that a rejection of a claim as being anticipated by a prior art reference requires the Patent & Trademark Office to establish a strict identity of invention between the rejected claim and a single prior art reference. Stated in other words, a rejection of a claim as being anticipated is inappropriate unless a single prior art reference discloses all features of the claim, as arranged in the claim. See, for example, Connell v. Sears, Roebuck & Co., 220 USPQ 193 (Fed. Cir. 1983).

In the instant case, there is clearly no strict identity of invention between the claimed devices, systems and methods defined by independent Claims 1, 15, 41 and 48, and the disclosures of the Sandor or Leather patents which have been applied to reject these claims. Neither of the two applied references teaches or suggests all of the limitations recited in the respective claims, or the overall arrangement of structure or method steps when the respective claims are viewed as a whole. Moreover, as noted herein, both of the two applied prior art references teach against limitations expressly recited in each of the independent claims.

Applicant respectfully submits that independent Claims 1, 15, 41 and 48, as amended herein, are allowable over the prior art applied in the Official Action. The remaining dependent Claims 2 - 11, 42 - 47, and 49 - 50, which depend directly or indirectly from one of independent Claims 15, 41, or 48, are

allowable at least for the same reasons as their respective parent independent claims.

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At page 5, paragraphs 9 - 12 of the Official Action, independent Claim 12 has been rejected as being anticipated by the Sandor patent, the Leather patent, the Rai et al patent, and the Reed et al patent. Independent Claim 12 has now been revised to include additional features of the invention disclosed in the original Specification. More specifically, independent Claim 12 now recites that the container includes a top surface, and that at least one tab extends upwardly from the top surface, as illustrated by Figure 1 of the drawing and discussed at page 10 of the Specification. Neither the Sandor or the Leather patents teach or suggest a top surface having a tab extending upwardly therefrom. Similarly, the Reed et al does not disclose a tab extending upwardly from the top surface of a container. On the contrary, Reed discloses handles 6, which are different elements from the tabs disclosed and claimed by Applicant, extending downwardly from the top surface of a container.

The Rai et al patent discloses a tab 21 which extends either downwardly from the bottom surface of a container, (as illustrated by Figure 2 of the Rai et al drawings), or it extends horizontally from the bottom surface of a container (as illustrated by Figure 3 of the Rai et al drawings). The Rai et

al does not teach or suggest a container having at least one tab extending upwardly from a top surface of the container.

Applicant respectfully submits that none of the art applied in the Official Action to reject independent Claim 12 teaches (or suggests) the container now defined by Claim 12, as amended herein. There is clearly no strict identity of invention between independent Claim 12 and any of the applied references. Moreover, the applied references either omit the claimed tab entirely, or teach away from the container defined by independent Claim 12 as a result of the different orientation of the disclosed tab.

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For the reasons discussed above, Applicant submits that all claims are in condition for allowance, and favorable action is respectfully requested.

Enclosed is a Petition to extend the time for responding to the outstanding Official Action for one (1) month, through and including October 14, 2005, and the required fee for the requested one month extension of time for response at the large entity rate.

Also enclosed are the Terminal Disclaimers referred to herein, and the required fee for filing the Terminal Disclaimers.

Respectfully submitted,



Mark P. Stone
Reg. No. 27,954
Attorney for Applicant
25 Third Street, 4th Floor
Stamford, CT 06905
(203) 329-3355